

)	Chapter 11
In re:)	
)	Case No. 18-50757
FIRSTENERGY SOLUTIONS CORP., <i>et al.</i> , ¹)	
)	
)	Hon. Judge Alan M. Koschik
Debtors.)	
)	

The United States, on behalf of the U.S. Environmental Protection Agency and the U.S. Nuclear Regulatory Commission, the Office of the Ohio Attorney General, acting on behalf of the Ohio Environmental Protection Agency and the Ohio Department of Natural Resources, and the Pennsylvania Department of Environmental Protection (the “Governments”), hereby serve and file these Requests for Production of Documents (“RFP”) from the Debtors in this jointly administered Chapter 11 matter, as described below.

1. Scope of Discovery (Location and Custody of Documents and Information).

¹ The Debtors in these jointly administered Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: FE Aircraft Leasing Corp. (9245), Case No. 18-50759; FirstEnergy Generation, LLC (0561), Case No. 18-50762; FirstEnergy Generation Mansfield Unit 1 Corp. (5914), Case No. 18-50763; FirstEnergy Nuclear Generation, LLC (6394), Case No. 18-50760; FirstEnergy Nuclear Operating Company (1483), Case No. 18-50761; FirstEnergy Solutions Corp. (0186), Norton Energy Storage L.L.C. (6928), Case No. 18-50764.

agents, servants, representatives, attorneys, or other persons employed or retained by the Debtors, or anyone else acting on the Debtors' behalf or otherwise subject to their control. These RFP are also directed to any information that the Debtors have the legal authority to obtain upon demand, as well as any information the Debtors have a practical ability to obtain.

2. Supplemental Responses. These requests are continuing. Supplement your responses to these RFP as and when required by Fed. R. Civ. P. 26(e).

3. Production Format. Produce the documents requested in accordance with Rules 7026 and 7034 Fed. R. Bankr. P., and Rules 26 and 34 Fed. R. Civ. P.

4. Responses. We request Debtors' production on a rolling basis and completion with 30 days, unless the court sets a different time.

5. It is intended that the following discovery requests will not solicit any information protected either by the attorney/client privilege or work product doctrine which was created or developed by, counsel for the responding party after the date on which this bankruptcy case commenced. If any inquiry is susceptible to a construction which calls for the production of such information, that material need not be provided and the parties will discuss whether a privilege log pursuant to Fed. R. Civ. P. 26(b)(5) will be required as to such information.

DEFINITIONS

1. "All" or "any" shall mean "any and all" and shall be all inclusive.
2. "Communication" means the transmittal of information by any means.
3. "Consultant" means any person who has advised Debtors or has acted as agent on behalf of Debtors, whether or not for consideration.
4. "Contractor" or "subcontractor" means any person who advised Debtors who

acts or acted as agent for or on behalf of Debtors, whether or not for consideration.

5. “Debtors” means the Debtors as defined in the Second Amended Joint Plan (Docket No. 2315-1), FE Aircraft Leasing Corp., FirstEnergy Generation, LLC, FirstEnergy Generation Mansfield Unit 1 Corp., FirstEnergy Nuclear Generation, LLC, FirstEnergy Nuclear Operating Company, FirstEnergy Solutions Corp., and Norton Energy Storage L.L.C., and includes, without limitation, their past and current affiliates and subsidiaries, their past and present officers, employees, agents, servants, representatives, counsel, consultants, contractors, subcontractors or other persons in possession, custody, or control of documents requested.

6. “Document” includes any “document” as that term is used in the Federal Rules of Civil Procedure and any recorded information that is not excluded from discovery by the Court.

7. “FE Corp.” means FirstEnergy Corp., a FE Non-Debtor Party as defined in the Second Amended Joint Plan (Docket No. 2315-1).

8. “FE Non-Debtor Parties” means the FE Non-Debtor Parties as defined in the Second Amended Joint Plan (Docket No. 2315-1).

9. “Person” means the plural as well as the singular, and shall include without limitation, individuals, associations, partnerships, limited liability companies and corporations or other forms of legal entities.

10. “Pertain to,” “pertaining to,” “relate to,” “relating to,” means discuss, describe, refer to, reflect, contain, analyze, study, report on, comment on, evidence, comprise, constitute, set forth, consider, recommend, concern, depict, describe, or allude to the subject. These terms do not, however, include mere non-substantive references to the subject.

11. “Reorganized Debtor” means any Reorganized Debtor as defined in the Second

Amended Joint Plan (Docket No. 2315-1), any Debtor as reorganized pursuant to and under the Plan or any successor thereto, by merger, consolidation, or otherwise, on or after the Effective Date, including New FES and New Holdco.

12. “Sites” means all Debtors’ properties including but not limited to the following sites, facilities, or locations:

- a. Bruce Mansfield Power Plant, Ferry Hill Rd., Shippingport Borough, Beaver County, PA 15061.
- b. Little Blue Run Impoundment, Green Township, Beaver County, PA 15043 and Grant County, WV 26034.
- c. Hatfield’s Ferry Power Plant, 2772 East Roy Furman Highway, Carmichaels, Greene County PA 15320.
- d. Hatfield’s Ferry CCB Landfill, Monongahela Township, Greene County, PA 15320.
- e. Beaver Valley Nuclear Plant, 808 PA-168, Hookstown, Beaver County, PA 15050.
- f. W.H. Sammis Power Plant, 29503 State Route 7, Stratton, Jefferson County, OH 43961.
- g. Hollow Rock, Class III Residual Waste Facility, State Road 7, Stratton, Jefferson County OH 43964
- h. Ashtabula A-B Power Plant, 2133 Lake Road East, Ashtabula, Ashtabula County, OH 44004.
- i. Lakeshore Plant, 6800 S. Marginal Road, Cuyahoga County, Cleveland, OH 44103.
- j. Lake Erie Submerged Land Leases, Lease Nos. SUB-0658-LA, SUB-1511-CU, SUB-2237-AS, and SUB-0528-LA.
- k. Pleasants Point Power Station, 2 Power Station Boulevard, Willow Island, Pleasants County, WV 26134.
- l. Davis-Besse Nuclear Power Plant, 5501 OH-2, Oak Harbor, Ottawa County, OH 43440.
- m. McElroy Impoundment, Willow Island, Pleasants County, WV 26170.
- n. Perry Nuclear Generating Station, 10 Center Road, Perry, Lake County, OH 44081.
- o. Eastlake Power Plant, 10 Erie Road, Eastlake, Erie County, OH 44905.

13. “You” (and any form thereof, including “your”) shall refer to Debtors,

including experts whom the Debtors expects to call as witnesses at trial and any attorneys retained by the Debtors.

14. Any term not specifically defined herein shall have, as appropriate, the same meaning ascribed to it by (a) the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601-9675, the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6901 *et seq.*, Clean Water Act (CWA), 33 U.S.C. §§ 1251 *et seq.*, Oil Pollution Act (OPA), 33 U.S.C. §§ 2701 *et seq.*, Clean Air Act (CAA), 42 U.S.C. §§ 7401 *et seq.*, Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2601 *et seq.*, and the Atomic Energy Act (AEA), 42 U.S.C. §§ 2011 *et seq.* and parallel statutes enacted under Ohio and Pennsylvania public health and safety and environmental law or (b) the Federal Rules of Civil Procedure and interpreting case law.

REQUESTS FOR PRODUCTION

For each Site (except where otherwise expressly stated), please provide the following Documents including data, documentation or models in native electronic format, and identify the corresponding Site for the responsive production:

1. All Documents containing environmental assessments or information including but not limited to reports, data, tables and figures detailing or related to:
 - a. Accidents, spills or other events leading to releases of contaminants to the environment and any reports addressing activities needed to remedy or contain the releases;
 - b. The source of any soil and water environmental contamination with site descriptions and characterizations;
 - c. The design and construction details, including drawings, and the operational and maintenance requirements for any closed (whether or not it may reopen) current containment, monitoring or treatment programs or systems;

- d. The results of any required monitoring, control, collection, recovery or treatment programs or systems currently active at any of the Sites and any evaluation of those results and the estimated periods of operation thereof);
- e. The evaluation of any monitoring, control, recovery or treatment programs or systems expected but not yet implemented and the estimated periods of operation thereof (e.g. provide quarterly progress reports required under the 2010 Consent Order and Agreement for Bruce Mansfield Generating Station in electronic format as prepared recently by Civil & Environmental Consultants, Inc.); and
- f. Corporate procedures for moving materials such as coal, CCR and water on and between properties.

2. All Documents related to past or future costs associated with or related to any closed (whether or not it may reopen) or current containment, monitoring or treatment processes or systems including but not limited to:

- a. Contracts, correspondence with contractors, internal corporate charges or transfers, invoices, proof-of-payments and summaries showing monthly expenditures by activity;
- b. Descriptions or cost estimation worksheets associated with bonds or financial assurance instruments paying for these activities or securing the obligation to perform those activities;
- c. All documents related to changes or potential changes to bond or collateral agreements as a result of the bankruptcy or any proposed plan of reorganization; and
- d. Records of any insurance payments including policies with details on recoverable costs and exclusions, correspondence with insurers, and remaining limits.

3. All closure plans including but not limited to:

- a. Past, present and draft documents other than those documents filed with the Nuclear Regulatory Commission;
- b. The characterization and evaluation of non-radioactive hazardous wastes, solid or residual waste or other wastes, waste at Sites regulated by the Nuclear Regulatory Commission with remedial plans and cost estimations for any monitoring, control, recovery or treatment programs; and

- c. Description of security procedures related to the long-term protection of remedial activities and the properties.
4. All Documents relating to the characterization and evaluation of non-radioactive hazardous substances, waste and/or petroleum product at Beaver Valley – Unit 1, Beaver Valley – Unit 2, Perry Power Plant and Davis-Besse, including but not limited to remedial plans and cost estimates for any monitoring, control, recovery or treatment programs.
5. All Evaluations of future estimated costs for monitoring, control, recovery or treatment programs, or restoration needed to address all applicable state and federal laws for property closure including but not limited to:
 - a. Descriptions, reports and/or cost estimates by Site;
 - b. Descriptions or cost estimation worksheets associated with bonds or other financial assurance instruments expected to pay for the activities or otherwise secure the obligations to perform those activities; and
 - c. Records of any expected future insurance recovery; and
 - d. Records of any indemnity agreements between Debtor and Non-Debtor entities or between Non-Debtor entities.
6. Provide documents illustrating the corporate organization of the FE Non-Debtor Parties, and FirstEnergy Solutions Corporation (“FES”) and FirstEnergy Nuclear Operating Company (“FENOC”) for every year from 1967 to 2019. These documents should pertain to all subsidiaries, affiliates, and parents, and illustrate their relationships to one another.
7. For every year from 1967 to 2019, provide documents explaining the ownership and operating structure of each Site and the role of any FE Non-Debtor relating to each Site. Documents summarizing or itemizing this structure are preferred. The documents should make clear:

- a. Every owner, operator, or lessor of each Site at the subsidiary level in each of the requested years.
- b. Any changes in ownership, operation, or lease that occurred in any of the requested years; the month, day, and year of that transfer; and the subsidiaries or affiliates involved in the transfer.
- c. For power plants, each subsidiary or affiliate's percent share of its total net demonstrated capacity in each year, allocated by generating unit if the owning, operating, or leasing subsidiaries vary by generating unit.
- d. For impoundments and disposal facilities, each subsidiary or affiliate's percent ownership or operational share in each of the requested years.

8. Please provide all documents pertaining to the potential corporate structure and organization of Debtors post-reorganization, including the corporate owner for each Site and property to be owned and/or operated by the Debtors and/or Reorganized Debtors.

9. The Declaration of Donald R. Schneider (Docket No. 55) states at paragraph 108: "...the Debtors created detailed financial projections for use by advisors and creditor constituencies. The Debtors' financial viability analysis involved the creation of multiple business plans accounting for a range of restructuring scenarios." Provide all documents, including any live, native spreadsheets, pertaining to the financial projections, viability analyses, business plans, and restructuring scenarios noted in or related this quoted text.

10. Provide the most up-to-date version of Debtors' five-year business plan (at times entitled: "Long Term Financial Projections – Scenarios"), in live, electronic form (i.e., spreadsheets, or other native format), and including:

- a. All schedules and supporting analyses;
- b. Any alternative business plan projections based upon energy pricing sensitivity scenarios; and
- c. Any alternative business plan projections based upon using bankruptcy emergence date alternatives.

11. Provide documents showing Debtors' projected cash balances, along with a reconciliation to deactivation scenario in live, electronic form (i.e., spreadsheets, or other native format).

12. Provide all documents pertaining to the dispatch modeling of Debtor electricity generating facilities, including all inputs and dispatch scenarios considered and model results for each scenario.

13. Provide FES' and FENOC's consolidating financial statements at a subsidiary level for each fiscal year from 2013 to the most recent full fiscal year for which they are available. These financial statements should include consolidating balance sheets, consolidating income statements, and consolidating statement of cash flows.

14. Referencing Disclosure Statement (Docket No. 2119), Note 21 – Fossil Remediation Costs ('pdf' file page 332 of 507):

- a. Provide all documents pertaining to the estimation of these annual costs, as presented in the FES, Unaudited Financial Summary ('pdf' file page 327 of 507; and,
- b. Provide all documents, including any qualitative or quantitative analyses that considered or estimated potential additional costs that are not accounted for in these dollar values.

15. Referencing Disclosure Statement (Docket No. 2119), Note 23 – Nuclear Deactivation Costs ('pdf' file page 332 of 507):

- a. Provide all documents pertaining to the estimation of these annual costs, as presented in the FES, Unaudited Financial Summary ('pdf' file page 327 of 507; and,
- b. Provide all documents, including any qualitative or quantitative analyses that considered or estimated potential additional costs that are not accounted for in these dollar values.

16. Referencing Disclosure Statement (Docket No. 2119), Note 39 – Nuclear Decommissioning Trust (‘pdf’ file page 334 of 507):

- a. Provide the decommissioning costs studies for each nuclear unit that underpin the dollar values presented in Note 39;
- b. Provide any documents not submitted to the Nuclear Regulatory Commission pertaining to Debtors’ nuclear decommissioning funding obligations for each nuclear unit, including cash flow analysis estimates;
- c. Provide any other documents pertaining to Debtors’ nuclear license termination liabilities.
- d. Provide all documents pertaining to other environmental liabilities potentially present at these nuclear units, in addition to nuclear license termination liabilities.

17. Referencing Disclosure Statement (Docket No. 2119), Note 46 – Asset Retirement Obligations (“ARO”), page 16 of Financial Projections (‘pdf’ file page 335 of 507):

- a. Provide all documents pertaining to the dollar value estimates presented therein, including the basis for a zero ARO; and
- b. Provide all documents, including any qualitative or quantitative analyses that considered or estimated potential contingent liabilities that are not accounted for in the dollar values booked in Note 46.

18. Provide all documents and correspondence related to how Debtors fund the assessment, monitoring, operation and maintenance, and remediation costs associated with the Sites. Those should include statements of cash flows for the appropriate Debtor(s) showing cash paid out related to environmental cleanup costs and cash received in association with the funding for those costs, and other forms of payment and financial assurance.

19. Provide all documents pertaining to Debtors’ financial assurance mechanisms related to any identified, contingent, or potential environmental liabilities. These mechanisms may include forms of self-insurance, or any other form of financial instrument or guarantee.

20. Provide all agreements in which the FE Non-Debtor Parties provide any

indemnity, guarantee, insurance coverage, or reimbursements to the Debtors.

21. Provide all agreements in which the Debtors provide any indemnity, guarantee, insurance coverage, or reimbursements to the FE Non-Debtor Parties.

22. Provide all documents related to indemnification and contribution agreements for environmental liabilities between and among the FE Non-Debtor Parties and the Debtors.

23. Provide all documents related to corporate restructures and reorganizations, including mergers, spin-offs, bulk transfers, and asset purchases between and among the FE Non-Debtor Parties and the Debtors.

24. Referencing Joint Plan of Reorganization (Docket No. 2120), paragraph 196, provide copies of all PCN Loan Agreements referenced therein.

25. Provide any documents relating to any communications relating to whether the Governments should be permitted to participate in Plan negotiations.

26. Provide any documents relating to any communications as to how the Plan should deal with environmental issues.

27. Provide any documents relating to any communications as to how the Plan should deal with the FE Non-Debtor Third Party Release concerning environmental liabilities.

28. Permit the Governments and their representative's entry onto the Sites or other properties and businesses possessed or controlled by the Debtors, so that the Governments may inspect, measure, survey, photograph, test, or sample the Sites and/or properties and businesses or any designated objects or operations at those Sites, properties or businesses.

Dated: March 27, 2019

FOR THE UNITED STATES

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CERTIFICATE OF SERVICE

I hereby certify that on March 27, 2019, I caused the above United States, State Of Ohio, and Pennsylvania Department of Environmental Protection Requests For Production Of Documents From The Debtors to be served upon the Debtors by email to Debtors' counsel, [HYPERLINK "mailto:salberino@akingump.com"] and [HYPERLINK "mailto:kdoorley@akingump.com"], and the parties via ECF.

s/ Patrick M. Casey
U.S. Department of Justice